WHITE PAPER ON FCC BROAD RULEMAKING TO PROTECT AND PROMOTING THE OPEN INTERNET

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Summary

For several generations, the TV audience happily embraced scheduled programming. For the industry, making a connection with consumers was a pretty straightforward, one-to-many experience…until NOW! Today's audience are becoming increasingly fragmented, splicing their time among myriad media choices, channels migrated to more specialize, niche content via cable, and multichannel offerings. Now, with the growing availability of on demand, self-programming and search features, some experiences are moving beyond niche to individualized viewing. Further, increasing competition from convergence players in TV, telecommunications, the Internet and now Mobile, the industry is confronting unparalleled levels of complexity, dynamic change and pressure to innovate.

On May 15, 2014 the FCC filed Notice of proposed Rule-making – In the matter of Protecting and Promoting the Open Internet, and started with a fundamental question: *What is the right public policy to ensure that the Internet remain open?*[1] For some (End uses) it should remain open a free as it is today. For others (Broadband provider) believe it needs to be tamed and changed to meet the growing need and cost to keep ahead of the changing technology curve. But for iClick2Media (Edge provider) believes a hybrid a true middle ground that meets all the parts and or members in the Internet food chain wants, needs and desires. Where Broadband provider are able to meet the demands of the consumers use; Where Edge provider both big and small play on a true equal playing field; and the End user continues to receive speed that are comparable to American's growing needs.

The fear of many Edge providers and End users is if unchecked or specific guidelines are not put into play Broadband providers will have freedoms to control behaviors and limit access of competitive Edge providers and frustrate the End user with control of speeds creating a type of censorship and ultimately will be the end of "virtuous circle of innovation" and in its place a hybrid monopoly where Broadband providers can create new business models such as "fast lanes" that create a hierarchy for some. Or create bait and switch of fees where the End users believes it pays for one thing and is given something else that is suppose to be comparable but is not i.e. paying for an unlimited plan but throttling the End users speed down if they reach a certain point how is that UNLIMITED? How about when Broadband provider become Edge provider and have similar content as some small business Edge provider and because Broadband providers controls the speeds and services it can and has mechanism to slow and or interrupt other Edge providers who's content is similar creating a window of opportunity for End users to discover the Broadband provider's content. Finally because there are only a hand full of Broadband providers it is in there best interest to create consortiums that create their own set of guidelines that pushes higher fees to Edge provider and End users. Because of our dependency on the Internet if we are not carful in how we respond to this Order we could be on the path to recreating of the Ma Bell[2] of yesteryear.

As the CEO|CMO of iClick2Media and Managing Partner of Independent Creative Artist - A Digital Content Collective I have spent considerable amount of time reading, researching and contemplating how I was going to answer all the questions in the FCC's Notice of Proposed Rule-making In the Matter of Protecting and Promoting the Open Internet. Because of the number of comments the FCC is seeking I am going to limit my answers to several key areas.

This White Paper will addresses the following:

1. Brief History of Telecommunications
    a. The logic of competition Law
2. Why is there a need for a fair and open Internet for all who use, rely and need access to an open Internet
    a. How having the Openness of the Internet as the Commission explained in its 2010 Open

[1] Preserving the Open Internet, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905 Para, 2
[2] AT&T Divestiture "What Killed Ma Bell? http://www.beatriceco.com/bti/porticus/bell/whatkilledmabell.htm

Internet Order, the Internet's open architecture allows innovators and consumers at the edges of the network "to create and determine the success or failure of content, applications, services and devices," without requiring permission from the broadband provider to reach end users.[3]

b. As an open platform, it fosters diversity and it enables people to build communities.

3. Develop the Strongest Legal Framework for Enforceable Rules of the Road

a. Reflects the principles that Chairman Wheeler outlined in February, including using the Section 706 blueprint for restoring the Open Internet rules offered by the D.C. Circuit in its decision in Verizon v. FCC, which relies on the FCC's legal authority under Section 706 of the Telecommunications Act of 1996.

b. At the same time, the Commission will seriously consider the use of Title II of the Communications Act as the basis for legal authority.

c. Seeks comment on the benefits of both Section 706 and Title II, including the benefits of one approach over the other to ensure the Internet remains an open platform for innovation and expression.

d. Explores other available sources of legal authority, including also Title III for wireless services. The Commission seeks comment on the best ways to define, prevent, expose and punish the practices that threaten an Open Internet.

4. Ensure choices for consumers and opportunity for innovators:

a. Proposes a requirement that all users must have access to fast and robust service: Broadband consumers must have access to the content, services and applications they desire. Innovators and edge providers must have access to end-users so they can offer new products and services.

b. Considers ensuring that these standards of service evolve to keep pace with of innovation.

c. In light of the important role that the Internet now plays as a vehicle for communication of all sorts—both for consumers and content providers—how should we consider the potential impact on social and personal expression of an Internet whose openness was not protected?

5. Prevent practices that can threaten the Open Internet:

a. Asks if paid prioritization should be banned outright.

b. Promises clear rules of the road and aggressive enforcement to prevent unfair treatment of consumers, edge providers and innovators.

c. Includes a rebuttable presumption* that exclusive contracts that prioritize service to broadband affiliates are unlawful. (*Rebuttable presumption is a presumption that is

[3] Preserving the Open Internet, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17910, para. 13 (2010) (Open Internet Order or Order), aff'd in part, vacated and remanded in part sub nom. Verizon v. FCC, 740 F.3d 623 (D.C. Cir. 2014). Among other examples, the Commission cited Sir Tim Berners-Lee, who—25 years ago—needed neither permission nor approvals from network operators to invent the World Wide Web using existing Internet layer and transport protocols. Id.

taken to be true unless someone comes forward to contest it and proves otherwise)

6. Expand transparency

    a. Enhance the transparency rules to provide increased and specific information about broadband providers' practices for edge providers, consumers.

    b. Asks whether broadband providers should be required to disclose specific network practices, performance characteristics (e.g., effective upload and download speeds, latency and packet loss) and/or terms and conditions of service to end users (e.g., data caps).

    c. Tentatively concludes that broadband providers should disclose "meaningful information" about the service, including (1) tailored disclosures to end users, (2) congestion that may adversely impact the experience of end users, including at interconnection points, and (3) information about new practices, like any paid prioritization, to the extent that it is otherwise permitted.

7. Protect consumers, innovators and startups through new rules and effective enforcement:

    a. Proposes the creation of an ombudsperson with significant enforcement authority to serve as a watchdog and advocate for start-ups, small businesses and consumers.

    b. Seeks comment on how to ensure that all parties, and especially small businesses and start-ups, have effective access to the Commission's dispute resolution and enforcement processes.

    c. Considers allowing anonymous reporting of violations to alleviate fears by start-ups of retribution from broadband providers.

8. Consider the Impact on the Digital Divide: Ensuring access for all communities:

    a. Considers the impact of the proposals on groups who disproportionately use mobile broadband service.

    b. Asks whether any parts of the nation are being left behind in the deployment of new broadband networks, including rural America and parts of urban America.

9. Conclusion

1. Brief History of Telecommunications

For the first time in this country history there is one space where equality is really working and that is the Internet. The Internet has become the voice of the voiceless, the playground for creative intelligence and the founding father's purest meaning of freedom of speech and assembly. This digital grassroots medium has allowed causes, social issues, and concerns to spread and share worldwide. This digital marketplace (the Internet) is fertile ground where small start-ups, big media corporation, creative partnerships and Mom & Pop operations can compete for End users seeking alternative options from Edge providers to view content and the type of content that is created for a specific targeted consumer. iClick2Media will side on the side that the Internet needs to be open and free to facilitate the virtuous cycle of innovation, entrepreneurism and continue technology development of growth. But also realize the need for change to keep innovation moving and growing on an equal playing field must happen if this type of circle of innovation is to continue.

2. Why there's a need for a fair and open Internet for all who use, rely and need access to an open Internet

a. How having the Openness of the Internet as the Commission explained in its 2010 Open Internet Order, the Internet's open architecture allows innovators and consumers at the edges of the network "to create and determine the success or failure of content, applications, services and devices," without requiring permission from the broadband provider to reach end users.[4]

Today's consumers are more connected that ever. With more access to and deeper engagement with content and brands, thanks to the proliferation of digital device, platforms and mobile apps. Content that was once only available to consumers via specific methods of delivery (such as via print, radio and broadcast television) can now be sourced and delivered to consumers through their multiple connected devices. This is driving the media revolution and blurring traditional media definitions.[5] Obtaining information via the Internet drives all the way we communicate, acquire information and form perspectives. We have become an engaging multi-device user in those pursuits. For example online video viewing and TV Everywhere authenticated video is being led by mobile devices, gaming consoles, and OTT (Over The Top) devices as broadcasters, pay-TV services provider, and advertisers look for ways to engage the multi-device consumer. To meet the needs of these demanding views, whom are watching more video online than ever before, media and entertainment companies must understand the trends[6], and be able to co-exist and have a space that affords real equal innovation.

Since the dawn of Internet, for many changed the way we think, care work, teach and educate. Each of entity in the circle can't live without the other and each needs each other in order to survive. However with changing behaviors of End users absorb information, Broadband providers and Edge Provider must be mindful as they attempt to meet the End users needs, that they remain innovative and not be disturbed the cornerstone of this innovation the virtuous circle.

Proponents of net neutrality or to use the Commission's preferred term, "Internet openness" - worry about the relationship between broadband providers and edge providers. They fear that broadband providers might prevent their end-user subscribers from accessing certain Edge providers altogether, or might as a means of favoring their own competing content or services or to enable them to collect fees from certain Edge providers[7]. The problem rests with the relationship between Broadband Providers and Edge providers and because Broadband provider have had prior "Bad Acts" may Edge providers and End users are concern if the internet changes these Bad Acts will become a part of the Broadband business model. For many of the Broadband providers who are becoming Edge providers realize this need to become apart of its business model of growth. The choice of where content come from has also complicated the landscape because the advent of "cord-cutters". There are more than 12 million End users whom have cut the cord to cable and are relying on their broadband service to view content from such Edge provider as Hulu and Netflix.

In the Open Internet Order, the Commission specifically, found that the Internet openness' enables a **"Virtuous circle of Innovation"** in which new users of the network- including new content application, services and devices-lead Providers will lead to increase end-users demand for broadband which drives network improvements, which in turn leads to further innovative network uses[8]. This type innovation and digital entrepreneurialism is what has made this country a beacon of light to the world. The goal should be to find the right balance where all parties get what the NEED not what they WANT.

[4] Preserving the Open Internet, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17910, para. 13 (2010) (Open Internet Order or Order), aff'd in part, vacated and remanded in part sub nom. Verizon v. FCC, 740 F.3d 623 (D.C. Cir. 2014). Among other examples, the Commission cited Sir Tim Berners-Lee, who—25 years ago—needed neither permission nor approvals from network operators to invent the World Wide Web using existing Internet layer and transport protocols. Id.
[5] FCC Notice of Proposed Rule Making – In The Matter of Protecting and Promoting the Open Internet
[6] U.S. Digital Video Benchmark Adobe Digital Index Q1 2014
[7] United States Court of Appeal No. 11-1355 p 6
[8] Open Internet Order 25 FCC at 17910-11, Para. 14

What iClick2Media would like to see and or suggest in the policy where the **"Virtuous circle of Innovation"** in which new users of the network-including new content application, services and devices-lead Providers will lead to increase end-users demand for broadband which drives network improvements, which in turn leads to further innovative network uses continues but has the ability to expand and create innovative ideas continues this cycle moving and growing. However leaving the Internet as it is after the D.C. Circuit court ruling would only allow Broadband provider to continuing to push the envelop to creating a hybrid monopoly where Edge provider and End users would not have the freedom that has gotten us to this breaking point.

b. As an open platform, it fosters diversity and it enables people to build communities.

Understanding free-expression of ideas on the Internet has fostered REAL diversity, has cause billions of End user to join political movements, express opinions and share ideas with others whom hold some of the same value that may be hundreds of miles away build "digital communities". The Internet as it is today allows that to happen. Every tweet, Facebook posting about a cause, or the creation of a blog about what matters to them gives every American the power to become a digital news outlet regardless of its relevance. For the first time in this country history the American people have been able to removed all barriers, give a voice to the voiceless, a forum to pool ideas, a space where every man, women or child could become a mighty giant all powered by the Internet. If you look back through time starting with President Lincoln's use of the telegraph (T-Mails) to President Obama's YouTube channel (The White House) their ability to get their messages out to the people has gone from a few (telegraph) to millions with the touch of a button (Internet). IClick2Media' is not proposing, that the FCC make no changes because realistically that would stump the growth of the Internet and innovation. But what iClick2Media is suggesting is a set of fair guideline that takes into account small business in the real sense, expanding Broadband providers growth

3. Develop the Strongest Legal Framework for Enforceable Rules of the Road

iClick2Media position is simple, the FCC has the authority and the rights granted to it by congress to ensure telecommunication policy is designed to maximize efficiency through competition. The logic of competition and antitrust in the United States is to guard against restriction and impediments to competition that are not likely to be naturally corrected by competitive forces. Thought this is true we are faced with a different type of competition that works in a system where each person in the circle needs the other in order for the "virtuous circle of innovation" to continue.

a. Regulatory Authority History

The Telecommunication Act of 1996 addressed the issue of whether the federal Government should intervene to prevent a "digital divide" in broadband access. Section 706 requires the FCC to determine whether "advance telecommunication capabilities [i.e., broadband or high- speed access] are being deployed to all Americans in a reasonable and timely fashion." If this is the case, the act directs the FCC to take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications markets.[9]

b. Legal Framework for Enforceable Rules of the Road

Throughout the Section 706 proceedings[10], parties had petitioned the FCC to take action in light of some problem in the deployment of advance service to all Americans. The FCC initially responded that Section 706 confers the FCC with the authority to report, but is not authority to take regulatory action.

- "Section 706(a) does not constitute an independent grant of forbearance authority or of authority

[9] Broadband Internet Regulation and Access: Background Issue, CRS Report for Congress, Nov, 21 2008
[10] Verizon v. FCC D.C. Cir. Jan. 14, 2014

to employ other regulating methods[11]

The FCC first sought to assert that Section 706 granted it authority in the Comcast case where FCC sought to enforce the Four Broadband Principles. However, the D.C. Circuit concluded that the FCC was bound by its own decision in the Advance Service Order that Section 706 granted it no such authority, and there had been no APA proceeding to change that conclusion:

- Section 706 "does not constitute and independent grant of authority." Comcast[12] (quoting Advance Service Order[13], Because the Commission has "Never questioned, let alone overruled, that understanding of section 706" it remain[ed] bound" by its prior interpretation.[14]

Now in the Open Internet proceeding, the FCC again concluded that section 706 does confer it with authority to take action. This time, however, the FCC addressed its interpretation of section 706 in the Advanced Services Order and gave a reasoned explanation to why it was reversing it interpretation. Open Internet Order[15] ("To the extent that the Advance Service Order can be construed as having red section 706(a) differently, we reject that reading of the statue for the reason discussed in the text")

On appeal, the D.C. Circuit up held with the FCC interpretation under Chevron[16] (although the court also reversed the FCC, holding that the FCC cannot treat ISPs as common carrier (non-discrimination) where the FCC has concluded that they are not common carriers). This of course beg the question of what Section 706 authorizes the FCC to do:

> "Although the Commission once disclaimed authority to regulate under section 706(a), it never disclaimed authority to regulate the Internet or Internet providers altogether, nor is there any similar history of congressional reliance on such a disclaimer. To the contrary, as recounted above[17] when Congress passed section 706(a) in 1996, it did so against the backdrop of the Commission's long history of subjecting to common carrier regulation the entities that controlled the last-mile facilities over which end users accessed the Internet. See, e.g., Second Computer Inquiry[18]. Indeed, one might have thought, as the Commission originally concluded, see Advanced Services Order[19] that Congress clearly contemplated that the Commission would continue regulating Internet providers in the manner it had previously. Cf. Brand X[20], Justice Breyer, stated in concurring opinion concluding that the Commission's decision to exempt cable broadband providers from Title II regulation was "perhaps just barely" within the scope of the agency's "statutorily delegated authority; *Id*. at 1005 Justice Scalia, dissenting arguing that Commission's decision "exceeded the authority given it by Congress". In fact, section 706(a)'s legislative history suggests that Congress may have, somewhat presciently, viewed that provision as an affirmative grant of authority to the Commission whose existence would become necessary if other contemplated grants of statutory authority were for some reason unavailable. The Senate Report describes section 706 as a "necessary fail-safe" "intended to ensure that one of the primary objectives of the [Act]—to accelerate deployment of advanced telecommunications capability—is achieved."[21]. As the Commission observed in the Open Internet Order, it would be "odd . . . to characterize Section 706(a) as a 'fail-safe' that 'ensures' the Commission's ability to promote advanced services if it conferred no actual authority."[22]

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[11] Advance Services Order 13 F.CC.R. at 224044 para 69 (1998)
[12] Comcast 600 F.3d at 658
[13] 13 F.C.C.R AT 24047 para 77 (1998)
[14] *id* 659. Verizon, Slip at 19(D.C. Cir. 2014
[15] F.C.C.R. at 17969 para 119 n.370
[16] *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. at 842–843.
[17] see supra at 7–9
[18] 77 F.C.C.2d at 473–74 ¶¶228–29
[19] 13 F.C.C.R. at 24029–30 ¶ 35,
[20] Cf. Brand X, 545 U.S. at 1003
[21] S. Rep. No. 104-23 at 50–51
[22] 25 F.C.C.R. at 17970 ¶ 120.

"Of course, we might well hesitate to conclude that Congress intended to grant the Commission substantive authority in section 706(a) if that authority would have no limiting principle[23], rejecting Commission's understanding of its authority that "if accepted . . . would virtually free the Commission from its congressional tether". According to Whitman, under the non-delegation doctrine, "the degree of agency discretion that is acceptable varies according to the scope of power constitutionally conferred."[24] But we are satisfied that the scope of authority granted to the Commission by section 706(a) is not so boundless as to compel the conclusion that Congress could never have intended the provision to set forth anything other than a general statement of policy. The Commission has identified at least two limiting principles inherent in section 706(a)[25]. First, the section must be read in conjunction with other provisions of the Communications Act, including, most importantly, those limiting the Commission's subject matter jurisdiction to "interstate and foreign communication by wire and radio[26]." Any regulatory action authorized by section 706(a) would thus have to fall within the Commission's subject matter jurisdiction over such communications—a limitation whose importance this court has recognized in delineating the reach of the Commission's ancillary jurisdiction[27]. Second, any regulations must be designed to achieve a particular purpose: to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." 47 U.S.C. § 1302(a). Section 706(a) thus gives the Commission authority to promulgate only those regulations that it establishes will fulfill this specific statutory goal—a burden that, as we trust our searching analysis below will demonstrate, is far from "meaningless." [28]

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Sec. 706(b): "Section 706(b) has a less tortured history. Until shortly before the Commission issued the Open Internet Order, it had never considered whether the provision vested it with any regulatory authority. The Commission had no need to do so because prior to that time it had made no determination that advanced telecommunications technologies, including broadband Internet access, were not "being deployed to all Americans in a reasonable and timely fashion," the prerequisite for any purported invocation of authority to "take immediate action to accelerate deployment of such capability" under section 706(b). 47 U.S.C. § 1302(b)....In July 2010, however, the Commission concluded that "broadband deployment to all Americans is not reasonable and timely." Sixth Broadband Deployment Report[29],...in the Open Internet Order the Commission made clear that this statutory provision does not limit the Commission to using other regulatory authority already at its disposal, but instead grants it the power necessary to fulfill the statute's mandate. See Open Internet Order,. Emphasizing the provision's "shall take immediate action" directive, the Commission concluded that section 706(b) "provides express authority" for the rules it adopted. *Id*."[30]

It is clear to iClick2Media that the Legal Framework for Enforceable Rules of the Road has been grant to the FCC under section 706. What Congress intended was to ensure all parties in the "Virtuous Circle of Innovation" were protected and that protection was flexible enough to grow and meet the needs of all the parties. However because there is no clear definition of how this need to be achieved just the power to achieve, the FCC must take all these comments from each of the party and craft a set of guidelines that focuses on the future growth not just what happening today. iClick2Media in Section 4 (page 10 of the documents) has created a list of things the FCC should consider when drafting these guidelines.

[23] Comcast 600 F.3d at 655
[24] 531 U.S. at 475.
[25] Open Internet Order, 25 F.C.C.R. at 17970 ¶ 121.
[26] 47 U.S.C. § 152(a).
[27] See American Library Ass'n, 406 F.3d at 703–04
[28] Dissenting Op. at 7. "*Verizon* Slip at 24-27 (D.C. Cir. 2014).
[29] 25 F.C.C.R. at 17972 ¶ 123
[30] Verizon, Slip at 27-29 (D.C. Cir. 2014).

a. The legal framework or foundation that the FCC needs to address is how to balance growth and authority to maintain innovation under 706 ?

Telecommunication's has traditionally been a regulated sector of the US economy. Regulation was imposed in the early part of this century and remains until today in various parts of the sector[31]. The main idea behind regulation was that it was necessary because the market for telecommunications services was a natural monopoly, and therefore a second competitor would not survive. Regulation was imposed to protect consumers from monopolistic abuses.

The overall goal of telecommunications policy is to maximize efficiency through competition. The logic of competition and antitrust law in the United States is to guard against restrictions and impediments to competition that are not likely to be naturally corrected by competitive forces. As an alternative to antitrust and competition law, economic regulation have been established in three exceptional case:

i) for those markets where it is clear that competition cannot be achieved by market forces;
ii) where deviation from efficiency is deemed socially desirable; and
iii) where the social and private benefits are clearly different.

In each of these cases, it is clear that a market without intervention will not result in the desired outcome. In the first case, this is true by the definition of the category. In the second case, markets may lead to efficiency, but society prefers a different outcome, and intervention is necessary to achieve this. In the third case, maximization of social surplus does not coincide with maximization of the sum of profits and consumers' surplus because of "externalities[32]". Therefore the logic is sound however the practical implications have a tendency to side with Wall Street not Main Street .

This balance of growth will rest on the language of 706 (b) which states:

> …and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and …. the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

This being the case, then it is important that the FCC keeps in mind the growth of broadband, the consumption of broadband and the creation of content for the consumption will continue to grow so long as America's dependency on the broadband grows. Section 706 must not only address the current state to protect innovation it must also look to the future and craft guidelines that will grow as well. All the data the necessary is available for the FCC to use to forecast what the digital market is saying is, what is occurring between Broadband provider, Edge provider and End users in the next five years. These guidelines need to include all these date tools along side the rules granted to ensure innovation continues.

The FCC must also in setting guidelines use the power and the authority it has under Title II and III simple because a vast majority of American use broadband via their mobile devices. Broadband mobile device in the coming years will be the single most important use of the Internet because in on the go convenience afford each person in the circle of innovation access on the go. As more and more shared mobile plans hit the market more and more Edge providers and End users will rely on that service verse broadband at home this is especially true for the Rural and Urban markets.

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[31] *Comments on Regulation of Access to Vertically-Integrated Natural Monopolies*, September 1995
[32] Bernheim, B. Douglas and Robert D. Willig (1996), "The Scope of Competition in Telecommunications," mimeo *AEI Studies in Telecommunications Regulation.*

b. Seeks comment on the benefits of both Section 706 and Title II, including the benefits of one approach over the other to ensure the Internet remains an open platform for innovation and expression.

Because broadband usage is in the home and on the go the FCC has the greatest opportunity to create effective guidelines that not only protect innovation but insure its has the power to do so. By combining the power of 706, Title II and Title III the FCC is afforded the reasoning and the power granted to it to protect the Openness of the Internet for years to come. This is only possible because Edge provider rely on the ease of access viewing its content at home and or on mobile broadband and End users ability to rely on viewing that content anywhere or anytime.

4. Ensure Choices For Consumers And Opportunity For Innovators

a. Proposes a requirement that all users must have access to fast and robust service: Broadband consumers must have access to the content, services and applications they desire. Innovators and Edge providers must have access to End-users so they can offer new products and services. Therefore the right public policy needs to take into account several things:

i. That the flow of information, content and speeds across Broadband providers network remain open and free with the ability to expand and grow to meet the needs of the Edge provider and End users

ii. All Edge providers regardless of it's owner have access to broadband providers with equal speeds in getting it's content out into the marketplace as any one in the pool of users,

iii. The End users never suffers viewing any content because speeds have been slowed down for usage and or because the Broadband provider had limited speeds for Edge provider's content.

iv. That the digital marketplace (the Internet) remains fertile ground where small start-ups, big media corporation, creative partnerships and Mom & Pop operations can compete for consumers seeking alternative option for viewing content (Edge) and the consumer will always have access to a system that require easy access without barriers to prevent that access

v. If Broadband providers are going to create fast lanes then those lanes are being created because of new technology being introduced into the marketplace and that fast lane creation is more about adoption of technology than it is giving particular companies and or individuals faster speed and access to content. Remember how America went from dial-up to broadband or how we went from analog cell phones to 4G[33], these Fast lanes should be use when converting from one system to another not designed to give some Edge providers faster speed. But these so called fast lane could be used when demand for a particular event is occurring so not to interfere with other Edge providers content and End users enjoyment. Also these fast lanes could also be used to meet the needs of End users to prevent systems crashing when Edge providers demand for content is high (i.e. Oscars, Grammy's Netflix's House of Cards, Orange is the New Black, etc.)

vi. Afford the Broadband provider the ability to be innovative based on demand not of bottom line/ This means Broadband should have to have the ability to grow its business as well meet the needs of changing technology and the demand of End users

[33] http://www.pcmag.com/article2/0,2817,2399984,00.asp

without destroying the fertile ground of innovation from Edge provider and new content application/services. Innovation for all parties in the circle of innovation must be met. This does not mean that all three parties get what they want but what the need to survive so each party can continue grow, create and enjoy what the Internet is and does.

vii. Create check & balance system like the FCC's Equal Employment Opportunity Rules and Policy that ensure diversity employment. This checks & balances should require Broadband provider to provide information to the FCC on it service, speeds and customers satisfaction to ensure the Virtuous circle of Innovation is still in tact. Since the FCC has the right to enforce, "The Commission, we further hold, has reasonably interpreted section 706 to empower it to promulgate rules governing broadband providers' treatment of Internet traffic, and its justification for the specific rules at issue here — that they will preserve and facilitate the "virtuous circle" of innovation that has driven the explosive growth of the Internet — is reasonable and supported by substantial evidence."[34] iClick2Media believes the system of checks and balances must come from the FCC and not from and outside body because the FCC does not has the authority to create such a body. However the guidelines can be designed in such a way as the FCC has set up its Equal Employment Opportunity Rules and Policies[35]

viii. If Broadband providers become Edge providers those Broadband provider will not treat its content any different that any other Edge provider content. This playing of innovation must be open and free if the "Virtuous circle of innovation"

ix. That the End user never feel the pinch for innovation or suffer in any way from viewing the content of its choice because of some deal a Broadband provider gave particular Edge users.

x. That Edge provider are given no more access that the other Edge provider even if that Edge provide is owned by a Broadband provider or acquire an Edge provider unless the demand for a particular event is occurring and that Edge provider could cause potential Edge provider and End user interruptions.

xi. And End users are not compromised because of potential dispute between Broadband providers and Edge providers.

b. Considers ensuring that these standards of service evolve to keep pace with of innovation.

i. It has never been a more important time to know how consumers are behaving than in today's fast evolving digital environment. More than ever we need a clear view of what is happening today and the implications for the coming years. These 11 points mentioned above are what iClick2Media believes need to be considers for maintaining the Virtuous Circle of Innovation. According to Nielsen's 2014 Digital Consumer Report[36] provides insight into what is propelling the new multiscreen, the always connected consumer lifestyle and how innovation has created demand for broadband and Edge providers. For most American consumers, their everyday lives and their digital lives are now wholly intertwined. So much so that in 2013, the Oxford Dictionary officially codified the term digital detox – "a period of time during which a person refrains from using electronic devices such as smartphones or computers…" – by adding it

[34] Verizon v. FCC 740 F.3d 623 (D.C. Cir 2014)
[35] http://www.pillsburylaw.com/siteFiles/Publications/AdvisoryFebruary2013CommunicationsTheFCCsEqualEmploymentOpportunityRulesandPoliciesAGuideforBroadcasters.pdf
[36] Nielsen The Digital Consumer February 2014

and the definition to its online version (which ironically, is accessible only via a digital device).

Because of innovation End users have a lot of devices. A majority of U.S. Households now owns high-definition television (HDTV), Internet-connected computers and smartphones, and they spend an average of 60 hours a week consuming content across multiple screens. In additional to more devices, consumers now have more choices for how and when they access content. Such as broadband-only delivery of programming and DVR's for time shifted viewing.

In particular, the ownership of mobile devices is revolutionizing the consumer experience with content on the go. This is NOT a trend it's a way of life and because of this growth the virtuous circle of innovation is here to stay.

ii. But the innovation and service doesn't stop there it also plays an key role in public institutions, such as public and school libraries, research libraries, and colleges and universities that has afforded several generations of student to have the ability to access information from multiply public libraries, colleges and universities nation wide. Million of men and women have attend college via an online education because their lives, families and other responsible will not allow them to attend a traditional university. Schools like the University of Phoenix, Capella University, Strayer University and Arizona State University.

1. According to elearning industry [37] eLearning industry Top 10 eLearning Statistics for 2014 Inforgraphic are:

2. In 2011 was $35.6 billion. In 2013 it was $56.2 billion and by 2015 it's going to double.

3. Corporation now report that e-Learning is the second most valuable training method that they use. This is no surprise, given that e-Learning saves businesses at least 50% when they replace traditional instructor-based training with e-Learning[38]

4. Today, it's estimated that about 4.6 college students are taking at lease one course on line. However by 2019, roughly half of all college classes will be eLearning-based[39]

5. e-Learning is also Eco-friendly. Recent studies conducted by Britain's Open University have found that e-Learning consumes 90% less energy than traditional course. The amount of CO2 emissions (per student) is also reduced by up to 85%.

6. Over 41.7% percent of global Fortune 500 companies now use some form of educational technology to instruct employees during formal learning hours and that figure is only going to steadily increase in future years. For a more in depth analysis of e-Learning in the enterprise you may find valuable the Kineo[40]

7. The world's most rapidly growing e-Learning markets are Malaysia and Vietnam, In fact , the estimated 5 year annual growth rate for the

[37] elearningindustry.com – Top 10 e-Learning Statistics for 2014 You Need To Know
[38] Corporate MOOCs are coming are you ready? www.eLearningindustry.com
[39] Technology in Education-Developing Relationship & Delivering Value by William Jenkins – www.elerningindustry.com
[40] Kineo E-Learning in the Enterprise Survey Results 2013 - Infographic

Asian eLearning markets is 17.3%. That is the highest compound annual growth of any global region.

8. According to a report released by IBM[41], companies who utilize e-Learning tools and strategies have the potential to boost productivity by up to 50%. For every $1 that company spends, it's estimated that they can receive $30 worth of productivity.

9. According to a recent study conducted by The Research Institute of American[42], e-Learning has the power to increase information retention rates by up to 60%.
10. It's been estimated that nearly 25% of all employees leave their jobs because there simply aren't enough training or learning opportunities, On the other hand, companies who do offer e-Learning and on the job training generate about 26% more revenue per employee.

11. 72% of companies who were included in a recent survey stated that e-Learning helps them to keep up to date with changes in their industry, which helps them to remain competitive within their niche. It was found in a study by Bersin & Associates[43] that companies and organizations that did have a strong learning culture did better in their market than those who do not. For example, these organizations are 46% more likely to be the leader in their industry note a 34% increase in their ability to respond to the needs of the customers and 17% more likely to became the market share leader[44]

The Standard of Innovation had been set by the End User demand for broadband. Broad providers have and continue to meet the demands of these end users because the Edge provider are supplying them multiple options of viewing. Inherently the End users demand have set the standard of service by forcing the Broadband provider to evolve to keep pace with Edge provider innovation

c. In light of the important role that the Internet now plays as a vehicle for communication of all sorts—both for consumers and content providers—how should we consider the potential impact on social and personal expression of an Internet whose openness was not protected?

i. Social and civic engagements around issue that matter to the American people all has gain momentum by using the Internet. One of the greatest campaigns that reach a world wide audience was and is "It Gets Better" project. In September 2010, syndicated columnist and author Dan Savage created a YouTube video with his partner Terry Miller to inspire hope for young people facing harassment. In response more that 50,000 user-created videos viewed more that 50 million times. To date, the project has received submissions from celebrities, organization, activists, politicians and media personalities, including President Barack Obama, Secretary of State Hillary Clinton, Rep. Nancy Pelosi, Adam Lambert, Anne Hathaway, Colin Farrell, Matthew Morrison, Joe Joans, Joel Madden, Ke$ha, Sarah Silverman, Tim Gunn, Ellen DeGeneres, Suze Orman, the staffs at The Gap, Google, Facebook, Pixar, the Broadway community, and many more[45]. It is believed this has saved the lives of million of young American dealing with issues that would lead them to want to commit suicide.

[41]
[42] Efficiency in Learning Evidence-Based Guideline to Manage Cognitive Load
[43] Bersin & Associates
[44] How eLearning Gamification can enhance corporate training
[45] www.itsgetbetter.org/about

Ensuring choices for consumers will come from how open the Internet remains. If the Broadband providers do not keep up with the demand that is driven by the End users then the circle will be broken. If Broadband providers start to interrupts Edge providers' opportunity for innovation the circle is broken. But if Broadband focuses it attention of demand and innovation the circle can continue to grow at a pace that meets the needs of all the parties in the circle.

5. Prevent practices that can threaten the Open Internet

We seek to update the record underlying the Open Internet Order's conclusion that broadband providers have incentives and the economic ability to limit Internet openness in ways that threaten to weaken or break the virtuous circle.

a. The biggest threat that can weaken or breakdown the Virtuous Circle of Innovation is the ability to slow down speeds of the Edge provider and or End user's service. For many Americans, broadband especially mobile broadband getting online is a daily occurrence. At home, at work and on the go. I have had the experience of my service with AT&T slowed down because of the amount of data I was using even though I had an unlimited data pricing plan, a plan that I had for 6 years (May 08'- June 17). I saw and experience first hand the effect and the power Broadband providers have and even the incentive to control the consumers use of the Internet. As an Edge provide and now a mobile broadcasting network my business suffered several times because my speeds were slowed or as AT&T says "throttle down". As a result, my response time to answering emails, viewing video content, texting clients, family and friends came to a snail pace. I was unable to use my unlimited data plan to Facetime with my clients (an AT&T Broadband provider prior bad act) or potential clients in New York, Atlanta, London, Germany, South Africa and China. My inability to tether my Mac Book Pro further slowed down the process of my company's Innovation because AT&T controlled the system or dictatorship its customers whom had these unlimited data plan, frustrating the Edge provider and End users to a point where many including my self had to change plans to meet the needs of iClick2Media growth and innovation in creating and viewing streaming content. Today's entrepreneur relies on the Internet to build its company's name, gain influence online (being on the first page in a search on Google, Bing or Yahoo search engine), to communicate with other professionals and most important build a new client base and or End users. That can't happen if the services you are paying for reach a certain point and the Broadband provider have the ability to slow you down for any reason they dead reasonable. That's too much power to have and it's a true slippery slope for Broadband providers do slowly destroy the Virtuous Circle of Innovation. Now I understand if you pay for a certain amount of gig usage and you go over that amount then I can understand slowing the End users or Edge providers speeds down but if you are paying for unlimited data plan and they still slow you down that a big problem and need to be addressed in these new guidelines.

b. **How have changes in the marketplace or technology since 2010 affected broadband providers incentives and economic ability to engage in such practices?**

So much has happen since 2010. Our consumption of broadband has increased tenfold. American's are using broadband more often on multiple screens at the same time (computer, smartphones and tablets). As this chart indicates the average time spent per day with the Internet

Share of Average Time Spent per Day on Select Digital Activities by US Adults, 2010-2013
hrs:mins and % of total

	2010	2011	2012	2013
Online*	**2:22**	**2:33**	**2:27**	**2:19**
—Social networking	17.5%	22.9%	26.3%	28.8%
—Video	4.2%	8.5%	16.3%	18.0%
Smartphone	**0:10**	**0:22**	**0:43**	**1:07**
—Social networking	10.3%	18.1%	23.1%	28.4%
—Video	-	9.0%	9.2%	12.0%
Tablet	**0:01**	**0:12**	**0:40**	**1:03**
—Social networking	0.0%	8.0%	13.0%	19.0%
—Video	-	8.3%	10.0%	19.0%

*Note: ages 18+; time spent with each medium includes all time spent with that medium, regardless of multitasking; for example, 1 hour of multitasking online while on a mobile device is counted as 1 hour for internet and 1 hour for mobile; *includes all internet activities on desktop and laptop computers*
Source: eMarketer, July 2013

160485 www.eMarketer.com

by U.S. adult users online and with what device (between 2010 - 2013[46]) shows a continue growth and End user usage. The many consumer products entering the marketplace and becoming more and more cost effective only compound this growth and usage.

With the growing availability of on demand, self-programming (YouTube, Vine, etc.) and search features, some experiences are moving beyond niche to individualized viewing. With increasing competition from convergence players in TV, the Internet and now Mobile, the industry is confronting unparalleled levels of complexity, dynamic change and pressure to innovate. According to Richard Greenfield at BTIG[47] in the first quarter of 2014 Netflix subscribers watch 4 billion hours of streaming content.[48] 88 percent of Netflix subscribers are in the U.S. that breaks down to 28.7 million people watching 87 minutes of streaming per day. iClick2Media analysis indicates that market evolution (the Future) hinges on two key market drivers: The Openness of the Internet and most important, the levels of Edge providers and End users involvement with media. For the next five to seven years, there will be movement on both of these fronts – but not uniformly. The industry instead will be stamped by consumer bimodality, a coexistence of two types of users with disparate channel requirements. While one consumer segment remains largely passive in the living room, the other has force radical change in business models in a search for anytime, anywhere content through multiple channels drive by the Internet. Broadband if not contained by FCC guidelines and or rules could take full economic advantage of this demand and in its advantage destroy the Virtuous Circle of Innovation between demand, need and creation/development.

c. **To what extent do broadband providers today have economic incentives and mechanisms to block or disadvantage a particular edge provider or class of edge providers?**

Broadband providers have every incentive and the mechanisms to block disadvantage a particular Edge Provider or class of Edge Provider. Every company wants the ability to grow its company bigger. Add different products and services that give them an advantage over the competition (AT&T wanting to purchase DIRECTV and Comcast-Universal wanting to acquire Time Warner) and create a greater demand from End Users. The goal for many of these Broadband Providers is to find way to increase their bottom lines, to make and or cause to be made more money for the benefit of the stockholders. This economic growth and survival are based on a simple goal “grab all that you can, where you can and for as long as you can”. These potential mergers are more about the future of broadband demands than it is about today’s innovation.

d. **To what extent do vertically integrated providers have particularized incentives to discriminate—on price, quality, or other bases—in favor of affiliated products?**

Broadband providers have every opportunity to fix prices, discriminate against, and decide the quality of the content that is streaming in favor of those whom will pay top dollar for better services. The lack of rules is fertile ground for such bad behavior. The power the Broadband providers have to give preference to some and not to other is simple a mind set of “whom else will they go to”. The ability to change service, slow service is all in their hands and the these vertically integrated providers, the broadband provider prior bad act are the beginning signs of what their potential or incentive to do what right for their bottom line not what good for a open playing field for all to benefit from. The writing is on the wall and the winds of change are coming but should it be at the destruction of the Virtuous Circle of Innovation? Look at the city of Detroit after the

[46] eMarketer Key Digital Trends for 2014
[47] BTIG Research
[48] Reed Hastings

Virtuous Circle of Innovation was broken.

e. Proposes the creation of an ombudsperson with significant enforcement authority to serve as a watchdog and advocate for start-ups, small businesses and consumers.

iClick2Media believes this would be a great idea. However unless this Ombudsperson fall within the FCC guidelines set by Congress, the creation of such a watchdog, an advocate for start-ups, small businesses and consumers will not be available. However what could happen is the FCC could created a department similar to the department that oversees the FCC's Equal Employment Opportunity Rules and Policies that would handle complaints, from start-ups, small businesses, Edge providers and End user to investigate bad behavior of Broadband providers i.e. Something similar to the EEOC process with dealing with employment discrimination.

f. Seeks comment on how to ensure that all parties, and especially small businesses and start-ups, have effective access to the Commission's dispute resolution and enforcement processes.

In today's world dispute resolution and enforcement is and will continue to be a must. For the purpose of the Whitepaper iClick2Media believes the dispute resolution should be a two prong approach. The first should be the formal complaint from any of the parties in the broadband food chain. This formal complaint should be private between the party in the food chain filing the complaint and the FCC. There should be a series of questions and facts that show or gives an indication of the particular wrong doing by the Broadband provider. If the questions are answered and meet a kind of hierarchy of standards[49] then the FCC will make inquiries to the Broadband provider being accused of a bad act(s). The Broadband provide will be able to rebut these allegations and present its facts based on the same series of questions asked by the complaining party. Once all the facts have been review the FCC under it authority will provide the appropriate punishment of the so called bad act. Said bad act will be come public record on the FCC website for any Edge providers and or End users to review. If the FCC decides there were no bad Act(s) then it too will become public record for any Edge provider and or Edge user to review. Now If the Broadband provider commits the same act multiple times then the FCC can impose fines and sanctions on their bad act(s) behaviors.

g. Should paid prioritization be banned outright?

YES. Any such type of prioritization will cause a break in the foundation of the "Virtuous circle of Innovation", and once that is broken it can never be mended.

h. We seek to update the record underlying the Open Internet Order's conclusion that broadband providers have incentives and the economic ability to limit Internet openness in ways that threaten to weaken or break the virtuous circle.

The biggest threat that can weaken or breakdown the virtuous circle is the ability to slow down speeds of the Edge provider's End user's service. For many broadband especially mobile Broadband provider having the ability to get online is a daily occurrence and at home , at work and on the go. Because I have had the experience of my company's data services slowed down even though I have an unlimited plan I saw the effect in my response time to answering emails, viewing content that I was interested in producing and because of their slow down evening texting clients, family and friends can to a snail pace. Today's entrepreneur relies on the Internet to build its company's name,

[49] Strict Scrutiny is part of the hierarchy of standards that courts use to weigh the government's interest against a constitutional right or principle. The lesser standards are rational basis review and exacting or intermediate scrutiny. These standards are used to test statutes and government action at all levels of government within the United States.

influence online, to communicate with other professional and most important build a new client base. That can't happen if the services you are paying for reach a certain point and the Broadband provider has the ability to slow you down. Now I understand if you pay for a certain about of gig space and you go over that space then I can understand but if you are paying for unlimited and they still slow you down that a big problem.

i. How have changes in the marketplace or technology since 2010 affected broadband providers incentives and economic ability to engage in such practices?

So much has happen since 2010. Our consumption of broadband has increased tenfold. American is using broadband more often on multiple screens at the same time. The as the chart indicates the average time spent per day with the Internet by US adult Users of each device between 2010 – 2014. Because demand is so high Broadband Providers have the ability to price fix forcing the End User to pay the price outside of Annual Adjustment Factors. The Broadband Provider can implement higher fees for Edge Providers like Netflix and Hulu because the on the go content is so high, and because of this potential price hike to Edge Provider any start-up wanting to get into the marketplace will be forced out before they even get in.

j. To what extent do broadband providers today have economic incentives and mechanisms to block or disadvantage a particular edge provider or class of edge providers?

i. Broadband providers have every incentive and the mechanisms to block disadvantage a particular Edge Provider or class of Edge Provider. Every company wants the ability to grow its company bigger and wider. Add things that gives them an advantage over the competition (AT&T wanting to purchase DIRECTV and Comcast-Universal wanting to acquire Time Warner) IF these mergers are allow to happen the Broadband will have the power to and the mechanisms to help promote their content which give the Broadband provider a advantage over the Edge Provider both big and small.

ii. The goal for many of these Broadband Provider is to find way to increase their bottom lines, to make and or cause to be made more money for the benefit of the stockholders. This economic growth and survival are keep to keeping the light on for any company and when you're a conglomerate it is a necessity for you to grab all that you can, where you can and for as long as you can. The planed acquisitions by these two companies are calculated for the future growth not the current growth. The first AT&T wanting to purchase DIRECTV is clearly to have content for it Broadband service and Comcast-Universal wanting to acquire Time Warner is the opposite content rich and will add a greater customer need to broadband.

iii. So say these two mergers are approve and the Edge provider (content source) and Broadband provider are one in the same does it make sense the opportunity to squeeze out the competition of in this case slow the competition down happen naturally because of the power these particular companies hold over broadband and content? iClick2Media believes it will we have already seen example of their behavior.

k. To what extent do vertically integrated providers have particularized incentives to discriminate—on price, quality, or other bases—in favor of affiliated products?

Broadband providers have every opportunity to fix prices, discriminate, and decide the quality of the content that is streaming in favor of those whom will pay top dollar for better services. The lack of rules is fertile ground for such behavior. The FCC has documented previous bad act from Broadband providers. The power Broadband providers have to give preference to some and non-to other is simple a mind set of

"whom else will they go to". The ability to change service, slow service is all in their hands and the these vertically integrated providers, the broadband provider prior bad act are the beginning signs of what their potential or incentive to do what right for their bottom line not what good for a open playing field for all to benefit from.

4. Expand transparency

a. To what extent do Broadband providers today have economic incentives and mechanisms to block or disadvantage a particular Edge provider or class of Edge providers?

i. Broadband providers have every incentive and the mechanisms to block or disadvantage a particular Edge Provider or class of Edge Providers. Every company wants the ability to grow its company bigger and wider. Add things that gives them an advantage over the competition (AT&T wanting to purchase DIRECTV and Comcast-Universal wanting to acquire Time Warner) IF these mergers are allow to happen the Broadband providers will have the power to and the mechanisms to help promote their Edge content which gives the Broadband providers a advantage over the Edge Provider both big and small. The goals for many of these Broadband Providers are to find way to increase their profits for the benefit of the stockholders. These planed acquisitions are calculated for the future growth not the current growth. All the data that has come out since 2010 points to how the End users have change their habits from sitting at home to watching television to viewing content online. This growth of broadband End users, show no sign of slowing down. So if you have the opportunity to get a head of the curve change policy that altered the Internet, Edge providers and End users behavior knowing what the future of content viewing is going to look like would it be worth fight for? You bet.

So say these two mergers are approve and the Edge providers (content source) and Broadband providers are one in the same doesn't it make sense given the opportunity to squeeze out the competition or in this case slow the competition down happen naturally because of the power these particular companies hold over broadband and content? iClick2Media believes it will and if Broadband providers Bad Acts as the FCC states are any indication then the FCC has a duty to do its job and look at the all data that forecasts the future of content and do all it can to protect the Virtuous Circle of Innovation.

ii. Enhance the transparency rules to provide increased and specific information about Broadband providers' practices for edge providers, consumers.

iii. There needs to be a clear set of guidelines that protect the End users and well as Edge providers. Its been established that the FCC can act under Section 706, Title II and potentially Title III since a large component of this Virtuous Circle of Innovation is tied to mobile. As stated in Section 4 of this documents these items should be considered as part of how to enhance the transparency rules as well fines establish for any violation that interferes with growth of Internet innovation.

b. Asks whether Broadband providers should be required to disclose specific network practices, performance characteristics (e.g., effective upload and download speeds, latency and packet loss) and/or terms and conditions of service to end users (e.g., data caps).

i. Yes, Broadband providers should be required to disclose specific network

practices so long as it does not interfere with specific trade secrets and or brand. All provider operate the same way because it they did not Broadband service would not be so uniformed. Though many device might not work on all networks only because each device is tuned to the frequency of the provider does not mean the device wont work it just means it needs to be unlock from the originator of the device system.

ii. Tentatively concludes that broadband providers should disclose "meaningful information" about the service, including (1) tailored disclosures to end users, (2) congestion that may adversely impact the experience of end users, including at interconnection points, and (3) information about new practices, like any paid prioritization, to the extent that it is otherwise permitted

iii. Meaning information needs to be understood by the average consumers. Most meaning information goes over the average consumers so Broadband providers need to find informative ways of informing consumers about their service, what might happen sometime, perhaps an alert when there is a tower down or congestion on the Broadband provider service. Such information practices will afford the End users the opportunity to become an active participant in the Virtuous Circle of Innovation not just and user of broadband.

c. To what extent do vertically integrated providers have particularized incentives to discriminate—on price, quality, or other bases—in favor of affiliated products?

i. Broadband provider have every opportunity to fix price, discriminate, decide the quality of the content that is streaming in favor of those whom will pay top dollar for better services. The lack of rules is fertile ground for such behavior. The power the Broadband providers have to give preference to some and none to other is a simple a mindset of "whom else will they go to". The ability to change service, slow down service is all in their hands and the these vertically integrated providers, the Broadband provider prior bad act are the beginning signs of what their potential or incentive to do the wrong thing when the right thing is to increase their profits.

d. What are broadband providers' incentives to increase revenues by charging edge providers for access or prioritized access to the broadband provider's end users?

i. The incentive is base on the current market of End Users use of broadband. According to Nielsen[50] A Year In Review: The average American consumes almost 60 hours of content each week across multiple screens. 28 hours of that is spent on the computer, 6:20 hours watching videos on the Internet, 5:31watching videos on a mobile device and 60:02 listening to Internet radio. End users are the most venerable because of their use where Broadband provider can pick the pockets of American to increase their profits simple because of the demand to content and the need to view that content via the Internet.

e. What are some economic incentives and abilities that Broadband providers may have to limit openness.[51]

i. The biggest economic is DEMAND. Demand for Broadband has no signs of slowing down. A decade ago, broadband started at 128Kbit/s. In 2014 multiple markets will feature speeds of over 100 Mbit/s and higher. The steady growth in broadwidth has enable, and will continue to enable a steady widening of the

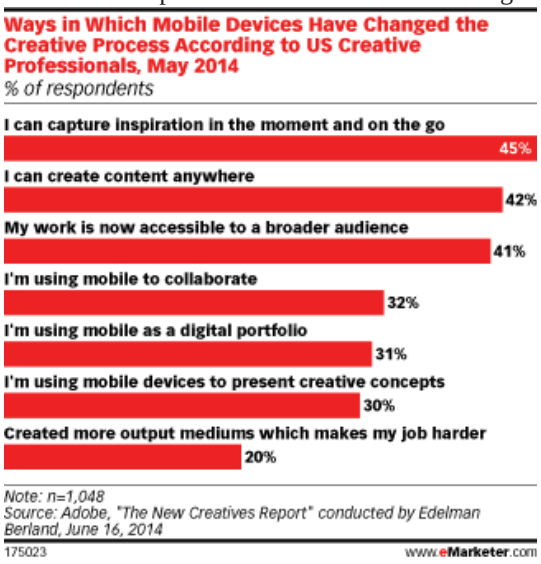
[50] A look Across Media – The Cross-Platform Report December 2013
[51] See, e.g., Public Knowledge and Common Cause Comments 4-7 (stating that data caps limit Internet openness).

scope of service than can migrate online. For example, it is expected faster broadband with help move aspects of healthcare online, with 100 million eVisits-online medical interaction-projected to take place in 2014[52]. If this is the case then it can be assumes that demand will be high and the broadband provider seeking additional income can make demands from Edge Provider and End User to pay those fee or accept slower speeds.

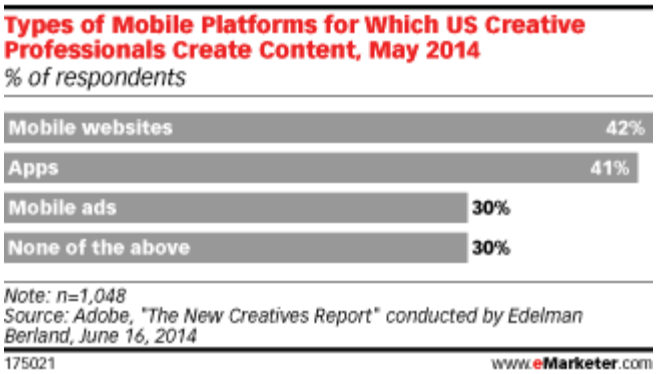
f. Protect consumers, innovators and startups through new rules and effective enforcement

Edge providers are an important component of innovation for the growth of the Internet. According to eMarketer[53] Creative professionals still prefer to sit down with a pen and paper for most activities, but mobile devices are reshaping many parts of their jobs. According to May 2014 polling by Edelman Berland for Adobe 74% of US creative professionals said that mobile was changing the face of creativity and design. The study defined creative professionals as those working in a creative industry such as graphic design, illustration, photography, web design and so forth.

Creatives' responses indicated that mobile gave them the freedom to do their jobs wherever and whenever. When asked how mobile had changed the creative process, 45% of respondents said it allowed them to capture inspiration on the go, and 42% said they could create content anywhere. Interestingly, 41% of respondents noted that the channel helped them to reach a larger audience—which makes sense given that US consumers continue to adopt and spend more time with mobile devices at a rapid pace.



Seven in 10 Creatives reported creating content from their mobile devices. Mobile websites were the most common type of platform for which respondents were creating content, cited by 42%. A close 41% were also working on mobile apps, and 30% said the same for mobile ads.



Nearly nine in 10 respondents (87%) believed that mobile content was having a positive effect on creative, with just 8% saying it had a negative impact, suggesting that mobile usage is facing an even brighter future in the industry.

[52] Deloitte Technology, Media & Telecommunications Predictions 2014
[53] Mobile Redesigns Creatives' Careers – Mobile allows creative professionals to capture inspiration and create content on the go eMarketer July 7, 2014

Today's End users i.e. consumers, are more connected that ever, with more access to and deeper engagement with content and brands, thanks to the proliferation of digital device and platforms. Content that was once only available to consumers via specific methods of delivery (such as via print, radio and broadcast television) can now be sourced and delivered to consumers through their multiple connected devices. This is driving the media revolution and blurring traditional media definitions.[54] Obtaining information via the Internet drives all the way we communicate, acquire information and form perspective. We have become an engaging multi-device user in those pursuits. For example online video viewing and TV Everywhere authenticated video is being led by mobile devices, gaming consoles, and OTT (Over The Top) devices as broadcasters, pay-TV services provider, and advertisers look for ways to engage the multi-device consumer. To meet the needs of these demanding views, who are watching more video online than ever before, media and entertainment companies must understand the trends. Equipped with the latest insight, they can improve content, sell targeted ads and get better results[55]

For may years since the dawn of Internet has a life chain that one can live with out the other and each needs each other in order to survive. However with changing behaviors from Broadband providers to Edge provider to End users innovation must continue happen if the needs and the demands are to be met. The right public policy needs to take into account several things:

i. That the flow of information across Broadband provider remain open and free

ii. All Edge providers are allow to have equal access to getting its content out into the marketplace as any one in the pool of Edge providers

iii. The End users never suffers viewing any content because speeds have been slowed down for usage and or because the Broadband provider had limited speeds for Edge provider's content because of End user demand for Edge providers' content

iv. Afford the Broadband provider the ability to be innovative not selective

v. Have a system of check & balance to ensure the Broadband provider are not giving themselves and other Edge priority status simply whom willing to pay a higher fee status

vi. That the End user never fee the pinch for innovation or suffer being able to view the content of its choice because of some deal a Broadband provider gave particular Edge users.

vii. That Edge provider are given no more access that the other Edge provider even if that Edge provide is owned by a Broadband provider or acquire an Edge provider.

viii. End users whom are paying for the Broadband service has access to any Edge provider without buffering, interruption, or other issue (so long as it not service related)

ix. Finally would iClick2Media like to see is a system that allows for the expansion of technology (Broadband); That the digital marketplace (the Internet) remains fertile ground where small start-ups, big media corporation, creative

[54] FCC Notice of Proposed Rule Making – In The Matter of Protecting and Promoting the Open Internet
[55] U.S. Digital Video Benchmark Adobe Digital Index Q1 2014

partnerships and Mom & Pop operations can compete for consumers seeking alternative option for viewing content (Edge) and the consumer will always have access to a system that require easy access without barriers to prevent that access.

Proponents of net neutrality or to use the Commission's preferred term, "Internet openness" - worry about the relationship between broadband providers and edge providers. They fear that broadband providers might prevent their end-user subscribers from accessing certain edge providers altogether, or might as a means of favoring their own competing content or services or to enable them to collect fees from certain edge providers[56]. The problem rests with the relationship between Broadband Providers and Edge providers. For many of the Broadband companies, their creation of content has become a part of their business model. The choice of where content come from has also complicated the landscape because the advent of "cord-cutters". More the 12 million End users and growing have cut the cord to cable and now view content via Broadband. In the Open Internet Order, the Commission specifically, found that the Internet openness enables a "Virtuous circle of innovation in which new users of the network - including new content application, services and devices-lead to increase End-users demand for broadband which drives network improvements, which in turn leads to further innovative network uses[57]. This type innovation and digital entrepreneurialism is what has made this country a beacon of light for so many and the goal should be how to find the right balance where all parties get what the NEED not what they WANT.

What iClick2Media would like to see and or suggest in the policy is a fair solution where Broadband keep innovating its services without creating a Jim Crow type of environment; where big corporation such as Netflix, Hulu, Amazon and or Broadband Edge provider are give no better speeds for their content than a small start-up are given access. The battle for an Open Internet as iClick2Media see's it is how to keep the Broadband provider honest, open and fair, not what they think is honest, open and fair but what the Edge provider and End users concept of honest, open and fair. Broadband corporation will make claims that it not fair to them to not be able to control its service because they are in the business of making money, where the End users who support these corporation want services that is fast and easily available. But the simple answer is for the FCC to use it authority and craft guidelines that reflect the needed protection, flexibility and future growth

g. <u>What is the current role of the Internet's openness in facilitating innovation, economic growth, free expression, civic engagement, competition, and broadband investment and deployment?</u>

From the moment it happen a generation or men and women were given their own opportunity to have their own type of industrial revolution. During the dot COM era, millions began to adapt to the new way of thinking and communicating, email. As we settled into a new way of thinking, communicating and doing business, several products came into the marketplace that help and enhanced our use of the World Wide Web. It was clear this was the way of the future and we all need to get on board.

Two of the greatest success stories are iTunes and EBay. iTunes change how we listen and buy music, and EBay created the new garage. These two business models gave entrepreneur the ability to become their own bosses, to have a voice and the means to meet like-minded people all being connected by the Web.

[56] United States Court of Appeal No. 11-1355 p 6
[57] Open Internet Order 25 FCC at 17910-11, Para. 14

Today's consumer is more connected than ever, with more access to and deeper engagement with content and brands, thanks to the proliferation of digital devices and platforms. Content that was once only available to consumers via specific methods of delivery (such as via print, radio and broadcast television) can now be sourced and delivered to consumers through their multiple connected devices. This is driving the media revolution and blurring traditional media definitions[58]. To put it simply, today's consumer has a lot of digital devices. A majority of U.S. households now own high-definition televisions (HDTVs), Internet- connected computers and smartphones, and they spend an average of 60 hours a week consuming content across multiple screens. In addition to more devices, consumers now have more choices for how and when they access content, such as broadband-only delivery of programming and DVRs for time-shifted viewing. In particular, the ownership of mobile devices is revolutionizing the consumer shopping experience. Increasingly, consumers are relying on mobile devices to research potential purchases and compare prices for goods and services. As U.S. consumers continue to take advantage of the convenience of anytime, anywhere browsing and shopping via their smartphones and tablets, there is a huge opportunity for retailers and brands to capture the full path-to-purchase.

Social media usage is now standard practice in our daily lives. Almost two-thirds (64%) of overall social media users say they use social media sites at least once a day via their computer, and almost half (47%) of smartphone owners visit social networks every day. With the rapid adoption of mobile devices, social media has a symbiotic relationship with the mobile consumer. And social has played a pivotal role, empowering consumers by providing a direct point of contact with the brands they use and the content they access.

Because of the openness of the Internet the consumer or the end user has had the greatest benefit. According the Nielsen, the rapid adoption of a second screen has transformed the traditional TV viewing experience. Consumers are using smartphones and tablets in ways that are natural extensions of the programming they watch, like looking up information about the characters and plot lines, or researching and purchasing products and services advertised just minutes before. Using social media to engage with other viewers has also transformed the live viewing experience for millions of consumers across the country.

According to the Telecommunication competition: the infrastructure-investment race[59] key findings:

i. U.S. communications traffic has almost completed the transition to Internet Protocol (IP). Legacy switched traffic amounts to less than 1% of IP traffic today and is likely to decrease to a small fraction of 1% by 2017. The regulatory framework, has not caught up to the marketplace reality.
ii. The development of multiple platforms, which provide transport for IP, has helped create a highly competitive communication ecosystem, which provides consumers a plethora of choices.
iii. As a result, consumers no longer have to fit into a "one-size-fits-all" mode. Each consumer can pick and choose among different bundles of networks/devices/content-application services to find the best fit for that individual .
iv. Those choices are provided over various platforms that compete with each other on the basis of different technology capabilities and different economics. Tat makes the competition sustainable. It also makes the variety of choices possible.
v. The greatest benefits of the *Telecommunication Act of 1996* have resulted from

[58] Nielsen -The Digital Consumer February 2014
[59] Telecommunications competition: the infrastructure-investment race by Anna-Maria Kovacs, Ph.D., CFA October 8, 2013

inter-platform competition, while attempts at artificially induced intra-platform competition have failed.

vi. The least-regulated platforms-Internet, cable, and wireless—are the most successful, because they have been free to innovate and to invest their capital efficiently . The most-regulated-the incumbent telephone companies (ILECSs) – Have been forced to waste both capital and operating funds on obsolete networks, thus limiting their ability to upgrade their infrastructure.

vii. A team led by Robert C. Atkinson of CITI estimated that from 2006 through 2011, 53% of the capital investment made by the three largest ILECs was allocated to their legacy network, while just 47% was spent on broadband infrastructure. Assuming that ratio is typical of the industry during those six years, and given that ILEC industry spent $154 billion in capes during those years, The ILECs spent $81 billion on legacy networks, while just $73 billon was spent on modern broadband infrastructure.

viii. The ILECs are losing circuit-switched voice and low speeds DSL subscribers. On the other hand, where they have deployed IP over fiber-based infrastructure, they are gaining Internet-access and video subscribers.

ix. To enhance competition and achieve the world-leading role in broadband-access that Congress and the Administration desire, the U.S. IP transition must be completed and the ILECs must be allow to repurpose the capital that is currently deployed to support their obsolete circuit-switch networks into fiber based broadband IP networks.

These 9 examples show innovation to ensure service from the Broadband provider to Edge user and End user are met. As a result of facilitating innovation, economic growth, free expression, civic engagement are Hispanic. U.S. Hispanics make up the fastest growing population segment and Mobile broadband users. Nielsen expects this group to contribute to 60 percent of the U.S. population growth in the next three years use of broadband. They spend more time consuming digital video than the national U.S. average, and they are adopting smartphones at a much quicker rate. As an important and growing consumer segment, Hispanic digital consumers are poised to be even more influential in the coming years. The openness of the Internet has allowed this segment of the population digital divide to slowly close. The Internet openness has afforded the Hispanic market access and because of current openness of the Internet mobile broadband growth for Hispanic has been able to keep pace with the current growth of use and innovation.

h. New business arrangements in the market between Broadband providers and Edge providers.

Traditionally, relationships in business have a linear supply and demand nature (1:1): products or services are delivered in one direction and money returns in the opposite. In the economic theory of two-sided markets, the value flow is made possible by a platform between two different markets. If one side of the market grows, it influences the other side of the market positive--the so-called network effect. For example, the more consumers are using a specific gaming platform, the more game developers will create games for that gaming platform, which in turn attracts more gamers. There are various other successful examples such as credit card platforms (linking the merchants and customers) and broadcasters (linking the advertisers and consumers).

i. What does the multi-sided market look like, and what are its effects on Internet openness?

Information-based platforms can develop the concept of two-sided markets into multi-sided markets; collecting data-through transactional and social platforms creates for

stakeholders multiple use cases in the same information domain. These platforms are able to cross-link contextual data coming from different market sides and create value from such linkage. This theory is applied in social networks, where consumers are not charged for the service, but the platform reuses consumer's personal data on an anonymous aggregated or individualized basis. These platforms often evolve into value networks or ecosystems in which one business at one side of the market stimulates the business at another market side by sharing information and, eventually, the customer base. The upside is that trust can be built slowly, step by step, as more and more information is shared. The downside is that trust and the entire new value can be destroyed by a single unwanted privacy violation of consumer or business data. Market participants have to be aware that they have a responsibility to protect the information being provided in order to maintain the ecosystem. These value ecosystems will not only influence the collaboration between the competitors in the same market, but will also force a cross-sector collaboration based on shared information. Multi-sided markets will transform into what we call 'multi-purpose transaction systems[60].

j. Do some types of Broadband and Edge provider arrangements (or aspects of such arrangements) raise greater concerns about Internet openness than others?[61]

YES they do. Any special relationship that affords an Edge provider more bandwidth than any other Edge provides begins the slipper slope of unfair treatment of other Edge provider who are in and or new the marketplace, who may not have the same cash flow as say a Netflix or Hulu to compete with and because of those arrangements can have serious implication of censorship for content that which is like and or similar to those whom have arrangements with broadband provide. iClick2Media as an Edge provider and now start-up content distributor believes the current state of the Internet has and can continue to be a place where small start-up can thrive and build many opportunities for entrepreneurs. If the FCC grants the right to broadband providers to broker deals with larger edge provider who can afford to have special lanes for their content to be streamed on then the intent of what the Internet was supposed to be will never be. The freedom of movement is quintessential when people want to share ideas, experience and causes. Giving the power of broadband to create special deals will seriously alter to digital fundamental freedom that Americans have come to know and rely on.

Broadband Providers have the Incentive and ability to limit Openness because they then can make demands for high fees that limits people's ability to have access to the Internet. For many American if not most rely of the Internet in two locations, at home and on their mobile devices. According the Open Internet Order found that broadband Internet providers had the incentives and ability to limit Internet openness, and that they had done so in the past.[62] Such proof of bad acts & control are for example Verizon $ 1.25 million settlement for refusing tethering[63], AT&T refusal to permit Apple's Face time on iPhones & iPads application to use its s mobile network, and AT&T has slowed down end users speeds who had unlimited data plan when they reached a certain point attempting frustrate End User in hopes they would change their plans. As the D.C. Circuit found that the Commission "adequately supported and explained" that absent open Internet rules, "broadband providers represent a threat to Internet openness and could act in ways that would ultimately inhibit the speed and extent of future broadband deployment."[64]

[60] http://ascentlookout.atos.net/en-us/home/sep-trends/Economic/multi-sided-markets.html
[61] See infra paras. 96, 126, 138.
[62] Open Internet Order, 25 FCC Rcd at 17915-26, paras. 20-37.
[63] Verizon Fined $1.25 Million for Blocking Android Tethering Apps By Michelle Maisto Posted 2012-07-31
[64] Verizon, 740 F.3d at 645.

k. We seek to update the record to reflect marketplace, technical, and other changes since the 2010 Open Internet Order was adopted that may have either exacerbated or mitigated Broadband providers' incentives and ability to limit Internet openness.

The world has become a very different place since 2010. In 2010 there were 300,520,098[65] by the end of 2014 the number of active cell phones will reach 7.3 billion by 2014[66]. End users rely on the mobile devices in every aspect of their live. According to Nielsen[67] here are some of our surprising findings:

- **YouTube**: some 40% of YouTube's traffic now comes from mobile. Compare that to just 25% last year and a paltry 6% only two years ago.

- **Audience Boom:** About 50 million people in the U.S. now watch video on their mobile phones. Fifteen percent of all online video hours globally are viewed on tablets and smartphones.

- **Machinima** is one of the most-watched YouTube channels in the world. The channel, focused on video and computer gaming, has a global audience of 200 million people. HBO, by comparison has roughly 30 million subscribers.

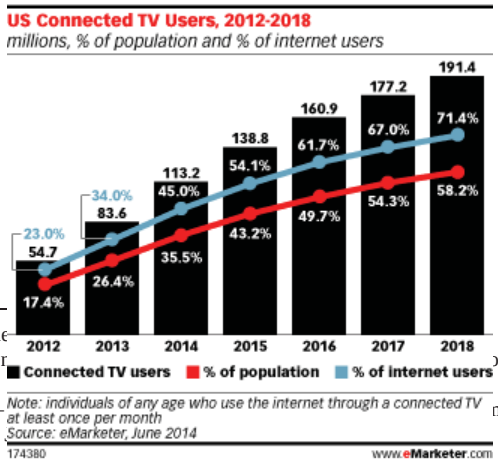
- **Netflix:** Netflix widely went with an iPad app first, not a smartphone app. Today, a reported 23% of all Netflix subscribers say they have watched on smartphones, and 15% have done so on iPads.

- **Bandwidth hogs:** One-third of *all* home broadband Internet traffic in the U.S. is generated by Netflix videos. YouTube accounts for nearly one-fifth of *all* mobile data traffic.

- **VEVO:** The music video platform's mobile and TV app audience exploded by 184% this year. Half of its views are from mobile.

- **Amazon:** The company has about 16.7 million Prime subscribers that get unlimited video

A longitudinal study by Nielsen of US Smartphone subscribers' use of rich media found across-the-board increases in activities such as Internet use, app downloads, and game downloads, streaming music and video/mobile TV viewing as shown by this chart:



Another example of how the market has changed since 2010 is the connected TV audience is still in a nascent stage, but the number of individuals in the US who use the Internet through a connected TV at least once per month is growing rapidly. eMarketer[68] estimates that more than 113 million people—35.5% of the US population and 45.0% of Internet users—will use a connected TV regularly this year, and in

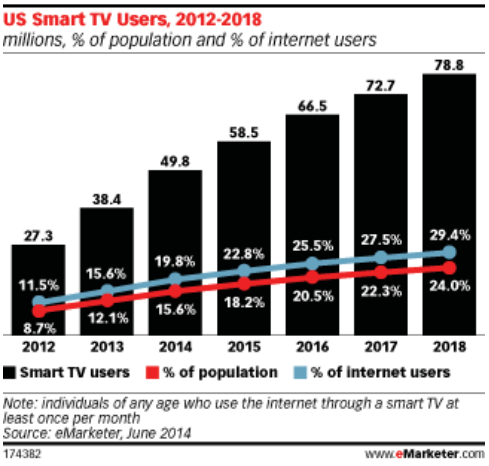
[65] CTIA—The
[66] Digital Trer on by 2014 By Joshua Pramis - February 28, 2013

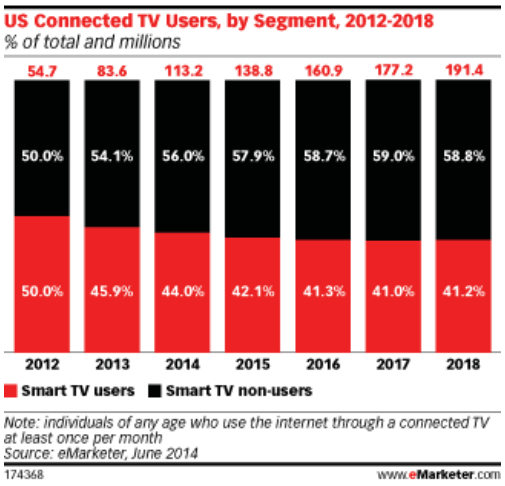
[67] Nielson's – nber 2013
[68] eMarketer,

2015, the majority of US Internet users will access the Internet through such a device. The connected TV audience will post double-digit growth rates through 2017.

Falling prices of smart TVs, combined with the increasing popularity of set-top devices—such as Apple TV, Roku, Google Chromecast, Amazon Fire and connected video game consoles—and ever-expanding streaming content options, will help drive audience growth. eMarketer defines connected TVs as sets hooked up to the internet through any means, including a built-in network connection or a third-party device such as a game console, set-top box, or laptop. eMarketer has raised its forecast for connected TV users in the US from its January 2014 projections based on new comparative data, expected releases of new smart TV and set-top box models in the coming years, and falling price points of these devices.

Smart TVs are defined more narrowly as sets with built-in Internet capability. eMarketer forecasts that the number of US smart TV users will reach 49.8 million in 2014, or 15.6% of the population and 19.8% of Internet users. Growth will be in the double digits through 2016. This is slightly lower than eMarketer's January 2013 forecast, due to new comparative data





Due to an increasing number of consumers accessing TV, movies and other video content via set-top devices, gaming consoles and Blu-ray devices, the share of smart TV users as a percentage of connected TV users will decrease slightly between 2014 and 2018, while the portion of smart TV non-users will rise. This year, smart TV non-users will account for 56.0% of connected TV users. By 2018, this will grow slightly to reach 58.8%. This will be iClick2Media sweet spot. Our content is geared towards the individual who want something different, new, exciting, the thing they can't get on TV (i.e. House of Cards, Orange is The New Black. Etc.). This type of television set will give our consumers the first screen option they know with their second screen option they love. Our use of broadband has grown and will continue to grow. The demand for access will reach new levels as new, cheaper products reach the market place in the coming years. If the Internet does nor keep it current openness and some other form is allowed to take it place the individual that suffers the most is the American public, Edge provider who are a part of that public and the only one that wins are the corporation who are afforded large fees

l. We seek general comment on the Commission's approach to analyzing Broadband providers' incentives and ability to engage in practices that would limit the open Internet, as well as more targeted comment as addressed below.

As both an End user and Edge Provider now Edge distributor I have first hand experience of the power Broadband provides have over the End users. I have been a customer of AT&T for 14 years. From April 2008 through June 8, 2014 I had an advertised plan that offered me unlimited phone, text and data.

As a consumer my assumption was defined by the word **UNLIMITED** which is defined by Merriam-Webster [69]dictionary as (1) lacking any control <unlimited access> (2) Boundless, infinite <unlimited possibilities> (3) not bound by exception undefined < the unlimited and unconditional surrender of the enemy. However this definition was not the case. On several occasion AT&T purposefully throttled my services down. As an Edge provider and End User my job requires me to view other content on other sites and seek out content for potential production on my mobile second screen application[70]. Each time my speeds were slowed I was told I had to wait until the next billing cycle for them to be returned to the normal speed that I had become accustom to and had to pay the same price but not get the same service. Now think if this was happening to me how many other cord cutters[71] what it happening too? These Broadband providers have the ability to slow, stop and or disrupt Edge Providers and End Users speeds and use of their service. There need to be an accountable of the broadband provider that protect the fluidness of the Internet while controlling the way Broadband provider

In the absence of such rules and policies, commenters note more instances of Broadband providers engaging in some level of restriction in Europe than the Commission has witnessed in the United States under its open Internet policies.[72] For example, a survey conducted by the Body of European Regulators for Electronic Communications (BEREC) shows that European Internet service providers reported engaging in specific restrictions such as traffic degradation as well as blocking and throttling when accessing "specific applications (such as gaming, streaming, e-mail or instant messaging service) and, to a much lesser extent, when [accessing] specific content and application providers."[73] These two examples should show how Broadband providers' are incentivizes and have ability to engage in practices that would limit the open Internet

m. We seek comment on this analysis and ask whether there is some other explanation to account for this phenomenon

What we are now seeing now is such a large growth broadband users. Consumers have moved away from the traditional way content has be view in the past and now rely on other devices to view content. Broadband company now more than ever have to change their behavior because of our reliance on other devices to view content that streams via the Internet now more than ever have the incentive to slow speeds of the

[69] http://www.merriam-webster.com/dictionary/unlimited
[70] www.iClick2Media.com
[71] The Nielsen Co. started labeling peoples in this group "Zero TV" households, because they fall outside the traditional definition of a TV home. There are 10 million of these residences in the U.S., up from 2 million in 2007
[72] Barbara van Schewick Ex Parte Letter at 2 & Attach. A at 13, fig. 2 (discussing evidence of blocking and discrimination as noted by several sources, including the Body of European Regulators for Electronic Communications (BEREC), that shows the relative frequency of broadband providers reporting some level of restriction). The European Parliament voted to adopt net neutrality rules in April 2014 that will now be considered by the 28 European Union Member States in order to become binding regulation. To date, among European countries only the Netherlands and Slovenia have net neutrality regulations. See Zack Whittaker, EU Passes Net Neutrality Law, Votes to End Throttling, Site Blocking, Between the Lines Blog, ZD Net (Apr. 3, 2014), http://www.zdnet.com/eu-net-neutrality-passes-vote-7000027998/.
[73] Body of European Regulators for Electronic Communications, A View of Traffic Management and Other Practices Resulting in Restrictions to the Open Internet in Europe 8-9 (2012), available at http://apps.fcc.gov/ecfs/document/view?id=7521087926 (discussing several instances where operators gave preferential treatment to select over-the-top traffic). Additionally, there is evidence that the second largest French ISP was automatically blocking ads in Internet traffic delivered to subscribers in January 2013. While the ISP ultimately removed the block following government intervention, press reports indicate that the block was motivated to pressure Google into compensating the ISP for the traffic generated by YouTube. Barbara van Schewick Ex Parte Letter s at 3; Cyrus Farivar, France's Second Largest ISP Suspends Ad Blocking For Now (Jan. 7, 2013), ArsTechnica, http://arstechnica.com/business/2013/01/frances-second-largest-isp-suspends-ad-blocking-for-now/. Furthermore, the Voice on the Net (VON) Coalition Europe released a report identifying restrictions on Internet access by mobile networks based mainly on the operators' terms and conditions. The report noted that in 2012, a U.K.-based mobile Internet access service provider contractually limited users from using services not affiliated with the ISP, including Internet-based streaming services, voice, peer-to-peer file sharing, or Internet-based video. VON Europe, Non-exhaustive Identification of Restrictions on Internet Access by Mobile Operators 17 (2012), http://www.scribd.com/doc/98641591/VON-Europe-Non-exhaustive-Indentification-of-Restrictions-on-Internet- Access-by-Mobile-Operators.

End Users to force the Edge providers to pay a higher price if that want their content to have the ability to continue being view by the End User or offer the End User an content alterative that the Broadband company may own or brokered a deal with an Edge Provider for an exclusive space and speed.

In a study by eMarketer[74] looked at the past present and future viewership of digital content. According to this chart online viewership continues to climb in spite of the economy.

US Online Video Viewers, 2010 - 2015	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
Online Viewers (millions)	145.6	158.1	169.3	178.7	187.6	195.5
-% change	11.3%	8.6%	7.1%	5.6%	5.0%	4.2%
- % of population	46.9%	50.5%	53.5%	56.5%	58.2%	60.1%
-% of internet users	65.0%	68.2%	70.8%	72.9%	74.7%	76.0%

This opportunity that has been created by the End Users demands in any other market would be a coup d'état. But because the FCC was created for the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication[75] must take a stand and protect the voices of the American whom are voiceless and to prevent discrimination on the basis of race, color, religion, national origin, or sex. The solution is a simple one with complications having the power as per the blueprint offered by the D.C. Circuit in its decision in *Verizon v FCC*, the Commission proposes to rely on section 706 of the Telecommunication Act of 1996[76]. The FCC must ensure that speeds of the Internet between the Broadband provider to the Edge Provider to the End Users are equal across the board regardless of the Edge Provider is. There should be no special deals and or treatment to any party in the content food chain that could limit another Edge Provider ability to have its content view. Second if Broadband providers are allowed to create special Edge provide lanes Edge provider will have to succumb to the pricing and will of the Broadband companies if the want to compete in the market place.

7. Consider the Impact on the Digital Divide: Ensuring access for all communities

Telecommunication, which in theory should bind us together, has often divided us in practice. Until the late 20th century, the divide split those with phones and those without it. Then it was the web: in 1995 the Commerce Department published its first look at the "digital divide," finding stark racial, economic and geographic gaps between those who get online and those who could not[77]

The overall goal of telecommunications policy is to maximize efficiency through competition. The logic of competition and antitrust law in the United States is to guard against restrictions and impediments to competition that are not likely to be naturally corrected by competitive forces. As an alternative to antitrust and competition law, economic regulation has been established in three exceptional case: (i) for those markets where it is clear that competition cannot be achieved by market forces; (ii) where deviation from

[74] eMarketer Top Digital Trends for 2013
[75] 47 U.S.C. 151 SEC. 1
[76] Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996) (1996 Act), as amended in relevant part by the Broadband Data Improvement Act (BDIA), Pub. L. No. 110-385, 122 Stat. 4096 (2008), is now codified in Title 47, Chapter 12 of the United States Code. See 47 U.S.C. § 1301 et seq.
[77] The New Digital Divide by Susan P. Crawford New York Times published December 3, 2011

efficiency is deemed socially desirable; and (iii) where the social and private benefits are clearly different. In each of these cases, it is clear that a market without intervention will not result in the desired outcome. In the first case, this is true by the definition of the category. In the second case, markets may lead to efficiency, but society prefers a different outcome, and intervention is necessary to achieve this. In the third case, maximization of social surplus does not coincide with maximization of the sum of profits and consumers' surplus because of "externalities"[78]

a. Fact & Figures About America People of Color

There's no question the U.S. population is shifting and the U.S. Census report is forecasting that White people will become a minority in the US by 2043[79] Minorities, now roughly one-third of the U.S. population, are expected to become the majority in 2042, with the nation projected to be 54 percent minority in 2050. What will it look like:

- By 2023, minorities will comprise more than half of all children.
- In 2030, when all of the baby boomers will be 65 and older, nearly one in five U.S. residents are expected to be 65 and older. This age group is projected to increase to 88.5 million in 2050, more than doubling the number in 2008 (38.7 million).
- Similarly, the 85 and older population is expected to more than triple, from 5.4 million to 19 million between 2008 and 2050.
- By 2050, the minority population — everyone except for non-Hispanic, single-race whites — is projected to be 235.7 million out of a total U.S. population of 439 million. The nation is projected to reach the 400 million-population milestones in 2039.
- The non-Hispanic, single-race white population is projected to be only slightly larger in 2050 (203.3 million) than in 2008 (199.8 million). In fact, this group is projected to lose population in the 2030s and 2040s and comprise 46 percent of the total population in 2050, down from 66 percent in 2008.
- Meanwhile, the Hispanic population is projected to nearly triple, from 46.7 million to 132.8 million during the 2008-2050 period. Its share of the nation's total population is projected to double, from 15 percent to 30 percent. Thus, nearly one in three U.S. residents would be Hispanic.
- The black population is projected to increase from 41.1 million, or 14 percent of the population in 2008, to 65.7 million, or 15 percent in 2050.
- The Asian population is projected to climb from 15.5 million to 40.6 million. Its share of the nation's population is expected to rise from 5.1 percent to 9.2 percent.
- Among the remaining race groups, American Indians and Alaska Natives are projected to rise from 4.9 million to 8.6 million (or from 1.6 to 2 percent of the total population).
- The Native Hawaiian and Other Pacific Islander population is expected to more than double, from 1.1 million to 2.6 million.
- The number of people who identify themselves as being of two or more races is projected to more than triple, from 5.2 million to 16.2 million.

According to a Nielsen[80] **Hispanic consumers are digital trailblazers.** In the US Hispanic make up the

[78] Bernheim, B. Douglas and Robert D. Willig (1996), "The Scope of Competition in Telecommunications," mimeo *AEI Studies in Telecommunications Regulation*.
[79] http://www.businessinsider.com/census-whites-will-become-a-minority-in-the-united-states-by-2043-2012-12
[80] The Digital Consumers February 2014

fastest growing population segment and Nielsen expects this group to contribute to 60 percent of the US Population in the next three years. They spend more time consuming digital video than the national average, and they are adopting smartphone at a much quicker rate. As an important and growing consumer segment, Hispanic digital consumers are poised to be even more influential in the coming years. The closing of the digital divide is happening not because Latinos own smartphones, go online from a mobile device and use social networking sites at a similar-and sometimes higher-rates than so other groups of Americans, according to an new analysis of three surveys by Pew Research Center[81]. The analysis also finds that when it comes to Internet, the digital divide between Latino and whites is smaller than what it had been just a few years ago. Between 2009 and 2012, the share of Latino adults who say they go online at least occasionally increased 13percentage point, rising from 64% to 78%[82].

b. Technology Adoption and Going Online

When it come down to owning a smartphone, going online from mobile devices and using social networking sites, Latinos are just as connected as if not more than other Americans. According to the Pew Research analysis.

Cellphone ownership: Fully 86% of Latinos are just as likely as Whites or Blacks to own a cellphone, a share similar to that of Whites (84%) and Blacks (90%)

Smartphone Ownership: Among adults, Latinos are just as likely as Whites and Black to own a smartphone -49% versus 46% and 50%

Going Online from a Mobile Device: Latino Internet users are more likely than White Internet users to say they go online using a mobile devide-75% versus 60%. Meanwhile, Latino and Black Internet users are equally likely to access the Internet from a mobile device -76% and 73% respectively.[83]

Social Networking Site Use: Among Internet users, similar shares of Latinos (68%), Whites (66%) and (69%) say they use social networking sites like Twitter and Facebook at least occasionally.

While Latinos use mobile and social networking technologies at a rate similar to those of other groups, they lag behind Whites when it comes to owning a desktop computer or accessing the Internet (with or without a mobile device.

Computer Ownership: Some 72% of laptop computer, compared with 83% of Whites, Among Blacks, 70% are a Computer owner

Internet Use: Nearly eight-in-ten (78%) Latino adults go online at least occasionally, compared with 87% of Whites and 78% Blacks.

Access to a public library allows people to explore educate and acquire knowledge for free. The Internet does the same thing with the exception of it being free (unless you use the public library). American has not been the greatest place when it comes to its history of race relations. But the openness of the Internet has afforded what is to come of this country FIRST REAL SPACE FOR DIVERSITY.

c. **If the Internet were to change, what impact would it have on groups who**

[81] Closing the Digital Divide: Latinos and Technology Adaption by Mark Hugo Lopez, Ana Gonzalez-Barrera and Eileen Patten March

[82] The Pew Research Hispanic Center has been collecting data regarding ethnic differences in technology use since 2006. See Fox and Livingston (2007); Livingston, Parker and Fox (2009); Livingston, (2010); Livingston and Lopez (2010) and Livingston (2011). Data collected prior to 2009 are not directly comparable to results shown here because they are based on a different survey methodology

[83] Overall, Latinos are less likely to be online than their White counterparts. Nonetheless, Latinos are still more likely than Whites to access the internet from a mobile device. According to the Pew Research Center for the People & the Press Biennial Media Consumption Survey, a smaller share of Whites adults-53% say they access the internet from mobile device. Among Blacks adults, 58% say they go online from a mobile device, a Share similar to that of Latinos

disproportionately use mobile broadband service.

As a minority business, a digital distribution start-up and Edge provider if the internet were to change the hardest hit would be minority small Edge business, and End users. Traditionally the economic scale in America has always been disproportionate which leads to many American unable to afford equipment to connect to the Internet. However the solution for many American minorities are family share plans that include phone, text and data. These plans for example AT&T's Family Share Plan[84], Sprint's Unlimited Family Plan[85] and T-Mobile The Simple Choice Plan[86] have give minorities End Users three things; (1) telephone service, (2) texting ability to communicate and share content links and (3) the ability to surf the internet and explore new worlds, gain insight on a topics, do homework and do it all on the go. If the internet as we know it were to change all these plans would have to change as well because Broadband companies would now have the ability to create new fees for such service and perhaps charge a higher price for said services which would cause income challenge families limited, if any access to the internet.

I predict that Broadband in the home will soon have the same issues as cable television is currently experiencing with Cord Cutter. Cord Cutters as define by The Nielsen Co., are individuals whom have stopped paying for cable and satellite TV service, and don't even use an antenna to get free signals over the air. These groups of people are watching shows and movies on the Internet, sometimes via mobile phone connections (tethering). This group "Zero TV" households[87] (and today's mobile broadband users) are called this because they fall outside the traditional definition of a TV home. There are 10 million of these residences in the U.S., up from 2 million in 2007.

d. The Black/White "digital divide" continues to persist, but is not consistent across technology platforms or demographic groups.

The digital divide between Blacks and Whites may be more a function of class than race, according to a new Pew Research Center survey. The study, entitled "African Americans and Technology Use[88]" and released Jan. 6, found that at the same income levels, there is little discernable difference in Internet use and adoption between African Americans and Caucasian Americans. Young, college-educated, and higher-income African-Americans mirror Whites of a similar demographic profile in the use of the Internet and the availability of broadband service at home. At least 86 percent of Blacks ages 18-29 are home broadband adopters, as are 88 percent of Black college graduates and 91 percent of African Americans with an annual household income of $75,000 or more per year. "These figures are all well above the national average for broadband adoption, and are identical to Whites of similar ages, incomes, and education levels," the report stated. Social networks are a major draw for African-Americans in cyberspace, particularly younger users. Overall, 73 percent of African-American Internet users—and 96 percent of those ages 18-29—use a social networking site of some kind. Twitter is particularly popular—22 percent of online Blacks are Twitter users, compared with 16 percent of online Whites. The picture is very different among older, non-college educated African-Americans, who are significantly less likely to go online or to have broadband service at home compared to their White counterparts. African-Americans age 65 and older has especially low Internet adoption rates compared with Whites; a mere 45 percent of Black seniors use the Web, and 30 percent have broadband at home. Among White seniors, 63 percent go online and 51 percent are broadband adopters. Analyzed together, the survey showed that the digital divide between Whites and Blacks persists, particularly when it comes to traditional means of Internet access. In all, 87 percent of Whites have traditional means of Internet access compared to 80 percent of Blacks. When it comes to home broadband adoption, 74 percent of Whites have some sort of broadband connection at home, compared to 62 percent of Blacks. However, mobile technologies are helping to bridge the gap. Overall, 72 percent of all African

[84] http://attonlineoffers.com/bestoffers/wireless-service

[85]http://www.sprint.com/landings/framily/?ECID=SEM:Yahoo:P:2014_Q2_Framily:General_Plans_NonBrand_BMM:General_Family:cell%20phonefamily%20plans:Broad&gclid=CKijnvymuL8CFY5dfgodTFMAdw&gclsrc=ds

[86] http://explore.t-mobile.com/simple-choice-no-credit?cm_mmc=PaidSearch-_--_-Bing-_-DR-Brand&cm_mmca1=bing&cm_mmca2=tmobile%20family%20share%20plan&cm_mmca3=ehttp://ad.doubleclick.net/clk;230764279;55106949;s;u=ms&sv1=W47hcGUq&sv2=3455496860&sv3=ncoqa7zbs0;?http://www.t-mobile.com/offer/no-credit-check-cell-phoneplans.html?cmpid=WTR_PB_W47hcGUq&002=2196322&004=1089116194&005=20210562433&006=3455496860&009=e&011=t-mobile%20family%20share%20plan

[87] http://www.huffingtonpost.com/2013/04/07/zero-tv_n_3033047.html

[88] http://www.pewinternet.org/2014/01/06/african-americans-and-technology-use/

Americans—and 98 percent of those between the ages of 18 and 29—have either a broadband connection or a smartphone. Blacks and Whites are equally likely to own any cell phone, including smartphones. About 92 percent of Black adults are cell phone owners, and 56 percent own a smartphone of some kind. While older African Americans trail others in Internet use, they are more likely to own a cell phone. While only 45 percent of African Americans ages 65 and older use the Internet, 77 percent are cell phone owners—only 18 percent, however, own smartphones.) This report on African Americans and technology is the first in a series of demographic snapshots of how technology has permeated different groups of adults in the United States. It was based on a survey of 6,010 American adults, including 664 who identify as African American. Advocates have long championed policies to close the digital split between different communities, saying the disparity affects rates of literacy and education, political influence, development and more.

e. If the change were to take, asks whether any parts of the nation are being left behind in the deployment of new broadband networks, including rural America and parts of urban America.

Yes part of rural American and urban America would left behind because the power of pricing would change that would have a direct effect on mobile phone service and cost, it would force the gap the digital divide gap open because all the people connected to Broadband service would feel the pain having to charge high price which ends up being paid by the End Users, If you compare the effect on the housing market

9. Conclusion

Innovation is the key to all things. This country has been built on the sprit of entrepreneurism. It's that sprit, which has allowed the start-up to become giant in industry. The current state of the Internet does need improvement not for today but for years to come. It is important that the Virtuous Circle of Innovation stays in tact but has enough room to grow. As stated above Broadband has been able to expand with creating fast lanes or giving one Edge provider faster speeds than the other but that does not mean it will way be that way. As demand rises so will Broadband need to make bugger profit and without a solid set of rules the Internet as we know will slowly disappear like 8 tracks, albums, analog phones, palm pilot and dial up. As and Edge provider and mobile digital distributor it is important to my business growth to have an Open Internet for Innovation. It is my hopes that the FCC in its wisdom will listen to the millions of American that want to keep the Internet as it with the ability to grow as demand does.